

UNITED STATES BANKRUPTCY COURT
FOR THE
DISTRICT OF MASSACHUSETTS
(Eastern Division)

)	
In Re:)	
)	
EDGARD VASQUES DEMIRANDA NETO,)	Case No. 16-10026-MSH
)	Chapter 7
Debtor)	
)	
)	
ROMILDO CUSTÓDIO DE SOUZA,)	
)	
Plaintiff)	
)	Adversary Proceeding
Vs.)	No. 16-01098
)	
EDGARD VASQUES DEMIRANDA NETO,)	
)	
Defendants)	
)	

JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT

Plaintiff, Romildo Custodio deSouza (“Plaintiff”) and Defendant, Edgard Vasques deMiranda Neto (“Defendant”), hereby move the Court for an Order approving the Settlement Agreement between the parties attached hereto and marked as Exhibit “A”.

In support of this Motion, the parties state as follows:

1. On or about February 18, 2015, Plaintiff filed a small-claims action against the Defendant in the Malden District Court in connection with the sale of a motor vehicle sold to Plaintiff by Defendant.
2. On or about October 9, 2015, the Malden District Court entered a default judgment in favor of Plaintiff and against the Defendant in the amount of \$5,844.10, plus interest and costs. (the “Malden Judgment”).

3. On or about January 6, 2016, the Defendant filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (the “Bankruptcy Code”).

4. On or about June 8, 2016, the Plaintiff filed the herein adversary proceeding (the “Adversary Proceeding”), seeking a determination by the Court that Defendant’s debt to Plaintiff is nondischargeable pursuant to 11 U.S.C. §523(a)(6), alleging that the Defendant acted willfully and maliciously by failing to return the deposit paid to Defendant by Plaintiff for the purchase of the motor vehicle, as well as for failing to reimburse Plaintiff for highway tolls incurred by Defendant while driving the vehicle registered to Plaintiff.

5. In addition, the Adversary Complaint seeks a judgment denying Defendant a Chapter 7 discharge pursuant to 11 U.S.C. §727(a)(4), for not reporting money given to the Defendant by his mother for household living expenses in the months prior to the Defendant’s bankruptcy filing as “income” on Defendant’s bankruptcy Schedule I, as well as failing to list his mother as a creditor in Schedule F.

6. The parties now wish to settle their differences amicably, and have reached the Settlement Agreement, subject to approval by the Court.

7. Pursuant to the terms of the Settlement Agreement, Defendant agrees that Plaintiff will hold a nondischargeable claim in the amount of \$3,612.87, and Defendant agrees to pay said amount over a term of three (3) consecutive months with 3 equal monthly installments. In return, Plaintiff and Defendant agree to voluntarily dismiss both the Section 523(a)(6) and 727(a)(4) counts, thereby dismissing all counts set forth in the Adversary Proceeding and resolving all matters raised therein.

8. The parties state that the Settlement Agreement is in the best interest of the parties in that it resolves all matters concerning the sale of the motor vehicle and the allegations raised by Plaintiff under Section 523(a)(6). The parties also believe that dismissal of the Section 727(a)(4) count is also in the best interest of the parties, as well as the Debtor's bankruptcy estate. The Debtor has maintained that any support he received from his mother prior to the bankruptcy filing was neither income nor a loan required to be disclosed on the Debtor's bankruptcy schedules, but rather family support which was openly disclosed by the Debtor at both his Section 341 creditors' meeting to the Chapter 7 Trustee, and at the 2004 Examination conducted by counsel to the Plaintiff. The Defendant therefore avers that he did not knowingly and fraudulently make a false oath or account in connection with his bankruptcy filing, and is therefore entitled to his Chapter 7 Discharge.

WHEREFORE, the parties respectfully request that the Court enter an Order approving the Settlement Agreement, and granting such additional relief as the Court deems just under the circumstances.

EDGARD VASQUES DEMIRANDA NETO
By his attorney,

/s/ George J. Nader

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By his attorney,

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Dated: October 31, 2016

CERTIFICATE OF SERVICE

I, George J. Nader, do hereby certify that I have this day served a copy of the **JOINT MOTION TO APPROVE SETTLEMENT AGREEMENT**, by first class mail, postage prepaid to individuals on the attached Service List and/or by electronic mail on all ECF registered users.

EDGAR VASQUEZ DEMIRANDA NETO
By his attorney,

/s/ George J. Nader

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Dated: October 31, 2016

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